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ABSTRACT

The purpose of this report, prepared by the Division of Social Services, is to provide assistance in understanding the changes in Alaskan statutes (effective August 26, 1977) which relate to children. The report has been organized so that the new statutes can be contrasted with the corresponding sections of the old statutes which have been repealed and re-enacted. The new statutes include additions and deletions in the previous statutes for purposes of comparison. Significant changes in the new statutes are also outlined. The statutes address the following issues: custody of children, parental rights, age of majority, violation of statutes or regulations by minors, minor's right to counsel, custody of delinquents, dependent minors (children in need of aid), appointment of guardian for dependent minors, best interests of the child in making dispositions, review hearing information, and the court's responsibility under the Alaska Rules of Children's Procedure. Additional statutory amendments affecting children are also included. (CM)

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Department of Health and Social Services

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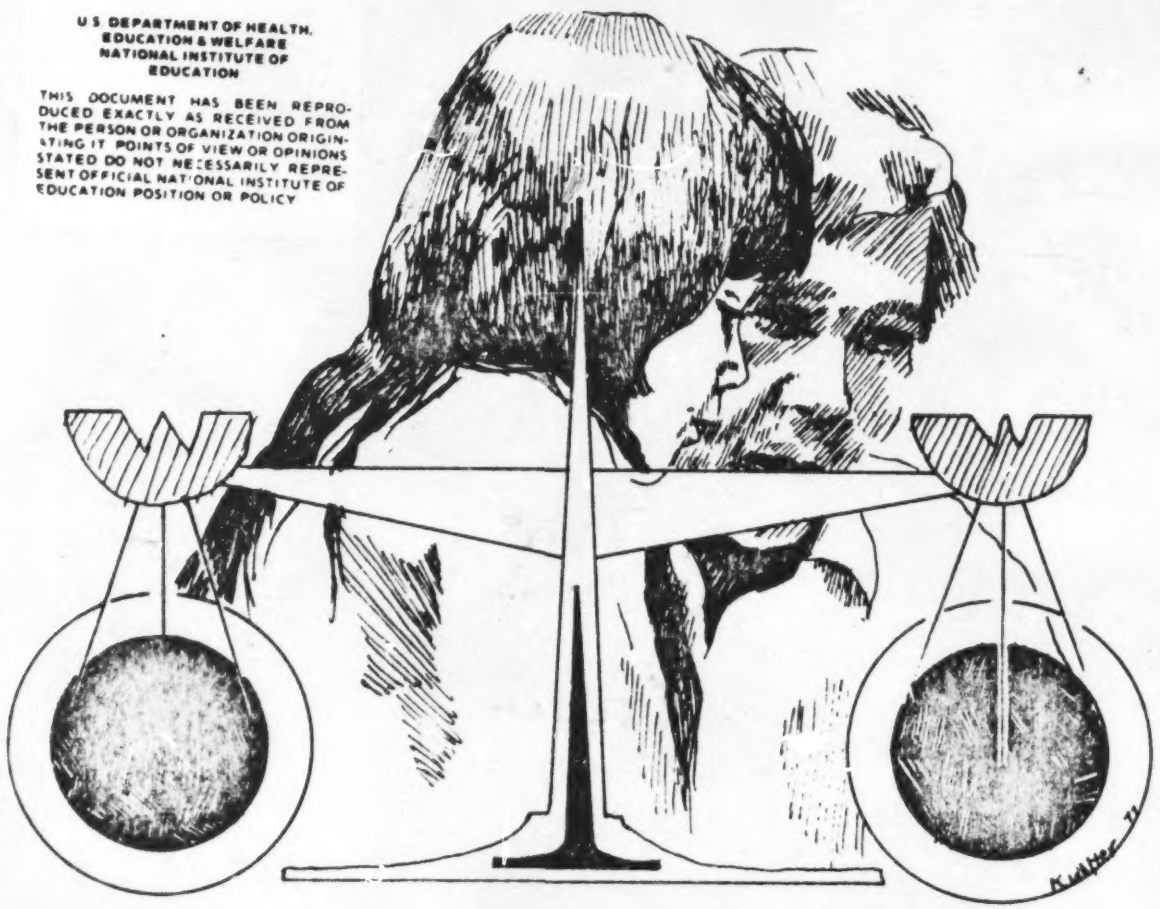

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ANALYSIS of 1977 CHILDRENS CODE

DIVISION OF SOCIAL SERVICES

CHILDREN'S CODE ANALYSIS

AUGUST, 1977

THIS REPORT WAS PREPARED BY

NINA KINNEY AND ELIZABETH MUKTARIAN

INTRODUCTION

This report has been prepared by the Division of Social Services to assist you in understanding the changes in Alaskan statutes relating to children which are effective on August 26, 1977.

This report has been organized in the following manner. On the right hand pages are the new statutes. Deletions in the previous statutes are included in parentheses in the appropriate sections on the right hand side. Likewise, additions to the statutes are underlined in the new statutes.

On the left hand page, you will find two types of notations. First, whenever a section of the old statute has been repealed and re-enacted, opposite that new section you will find the section which has been repealed.

The significant changes in the new statute are outlined in black boxes on the left hand page.

It must be recognized that the Children's Code, as any set of statutes, will require a period of adjustment after implementation. However, after you have worked under these new statutes you may find areas you consider to be problematic. We suggest that Division of Social Services staff communicate such areas to their Regional Manager who will forward their concerns to the Director's Office. Some areas may require policy decisions within the Division. For other areas it may be necessary to consult the Attorney General's Office for further interpretation.

We hope that this report, by contrasting old and new sections, will help to clarify the significant areas of change in Alaska's Children's Code. We wish to thank Elizabeth Arnold, Assistant Attorney General for her assistance in reviewing the draft of this report, and to acknowledge the Legislative Affairs Agency for their preparation of the typescript of the statute.

Sec. 1. AS 09.55.205 Enumerates criteria to be utilized by a court in determining the "best interests of the child" in awarding custody of children; in addition it specifies what is in the best interests of the child.

Sec. 09.55.205. Judgments for custody. In an action for divorce or for legal separation the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order. Appointment of a guardian ad litem or attorney for the child shall be made under the terms of AS 09.65.130. In awarding custody the court is to be guided by the following considerations:

(1) by what appears to be for the best interests of the child and if the child is of a sufficient age and intelligence to form a preference, the court may consider that preference in determining the question;

(2) as between parents adversely claiming the custody neither parent is entitled to it as of right. (§ 1 ch 160 SLA 1968; am § 1 ch 167 SLA 1975)

"An Act relating to children's laws and related judicial proceedings; changing the court's responsibilities and authority under Children's Rules 11(a), 12(a) and (b), 14, 15, 21 and 28, and Rule of Civil Procedure 17(b)."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.55.205 is repealed and re-enacted to read:

Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce or for legal separation the court may, if it has jurisdiction under AS 25.30.020, and is an appropriate forum under AS 25.30.050 and 25.30.060, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order. Any appointment of a guardian ad litem for a child shall be made under the terms of AS 09.65.130. The court shall determine custody in accordance with the best interests of the child. Neither parent is entitled to preference as a matter of right in awarding custody of the child. In determining the best interests of the child the court shall consider all relevant factors including:

(1) the physical, emotional, mental, religious and social needs of the child;

(2) the capability and desire of each parent to meet these needs;

Sec. 2. AS 09.65.130 deals with representation of a child. The changes clarify the responsibilities of a guardian ad litem and attorney for a child, and provides for the appointment of both and procedures for both.

The new subsection (c) clarifies that the guardian ad litem is to represent the best interests of the child, not his preferences. It also delineates the limits of the guardian ad litem's authority.

(3) the child's preference;

(4) the love and affection existing between the child and each parent;

(5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and his other parent.

* Sec. 2. AS 09.65.130(a) is amended to read:

(a) The court may, upon the motion of either party or upon its own motion, appoint an attorney [OR GUARDIAN AD LITEM] to represent the [INTERESTS OF A] minor [OR DEPENDENT CHILD] with respect to his custody, support, and visitation or in any other legal proceeding involving his welfare. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that those matters are at issue. Upon notification, the court shall determine whether the child should have legal representation [ASSISTANCE] or other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney [OR GUARDIAN AD LITEM] and may further order that other services be provided for the protection of the child.

* Sec. 3. AS 09.65.130 is amended by adding a new subsection to read:

(c) Instead of, or in addition to, appointment of an attorney under (a) of this section, the court may, upon the motion of either party or upon its own motion, appoint an attorney or other person to serve as guardian ad litem to represent the best interests of a minor in any legal proceedings involving his welfare. The court shall appoint a guardian ad litem when, in the opinion of the court, representation of the child's best interests, to be distinguished from his preferences,

The guardian ad litem should, when reasonable, be appointed from among persons in the community where the child's parents or the person having legal custody or guardianship of the child's person reside.

Sec 4. AS 30.15.050 deals with consent to adoption. This does not change the requirement; it was added for clarification.

Sec. 5. AS 25.20.010 changes the age of majority from 19 to 18 years. Those statutes which specifically provide an age requirement of 19, such as drinking, jury duty, and selling/serving liquor remain unchanged.

would serve the welfare of the child. The person appointed under (a) of this section may also be appointed as guardian ad litem under this subsection. The court in its order appointing a guardian ad litem shall limit the duration of the appointment of the guardian ad litem to the pendency of the legal proceedings affecting the child's interests, and shall outline the guardian ad litem's responsibilities and limit his authority to those matters related to his effective representation of the child's best interests in the pending legal proceeding. The court shall make every reasonable effort to appoint a guardian ad litem from among persons in the community where the child's parents or the person having legal custody or guardianship of the child's person reside. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that these matters are at issue. Upon notification, the court shall determine if the child's best interests need representation or if the child needs other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's guardian ad litem and may further order that other services be provided for the protection of the child.

* Sec. 4. AS 20.15.050(a)(1) and (5) are amended to read:

(1) <u>for purposes of this section,</u> a parent who has abandoned a child <u>for not less than six months</u> [WITHOUT AFFORDING MEANS OF IDENTIFICATION, OR WHO HAS ABANDONED A CHILD AS DETERMINED UNDER AS 47.10.080(c)(3)(B)];

(5) a parent whose parental rights have been terminated by order of the court under <u>AS 47.10.080(c)(3)</u> [SEC. 180 OF THIS CHAPTER];

* Sec. 5. AS 25.20.010 is amended to read:

Sec. 25.20.010. AGE OF MAJORITY. A person is considered to have arrived at majority at the age of <u>18</u> [19] years, and thereafter has

Sec. 6. AS 25.20.060 provides for resolution of a child custody controversy between claimants not parties to an action for divorce or legal separation. The significance of this amendment is that it clarifies that it applies to persons who are not married or to custodians who are not related.

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor

(1) violates a law of the state, or an ordinance or regulation of a political subdivision of the state;

(2) by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian;

(3) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others;

(4) is abandoned by his parent, guardian or custodian;

(5) lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian;

(6) associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others;

(7) is an orphan who has no relatives willing and able to assume custody and care;

(8) has been released by his parent or parents, or guardian, to the department for adoptive purposes; or

(9) is in need of special care or training not otherwise provided.

Sec. 7. AS 47.10.010(a) is a crucial section for Division of Social Services' staff. It includes major statutory changes. The whole concept of status offenders is removed except for runaway children. In addition, it eliminates the categories "child in need of supervision" (CHINS) and "dependent child" and in substitution grants the court jurisdiction over a child to be a "child in need of aid" (CINA), and significantly changes the types of situations which could result in such a finding. The criteria is much more specific and focuses on actual or imminent harm to the child rather than on conduct of the parent or guardian unless it endangers the child. Note that "caring" (Sec. 7 , (2), (A)), means more than physical care. See Sec. 28, (9).

control of his own actions and business and has all the rights and is subject to all the liabilities of citizens of full age, except as otherwise provided by statute.

* Sec. 6. AS 25.20 is amended by adding a new section to read:

Sec. 25.20.060. CUSTODY OF THE CHILD. If there is a dispute over child custody, either parent may petition the superior court for resolution of the matter under this section unless an action between the parents is pending under AS 09.55. The court shall award custody on the basis of the best interests of the child. In determining the best interests of the child, the court shall consider all relevant factors including those factors enumerated in AS 09.55.205. Neither parent, regardless of the question of the child's legitimacy, is entitled to preference in the awarding of custody.

* Sec. 7. AS 47.10.010(a) is repealed and re-enacted to read:

(a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the court finds the minor

(1) to be a delinquent minor as a result of violating a criminal law of the state or of a municipality of the state; or

(2) to be a child in need of aid as a result of

(A) the child being habitually absent from his home or refusing to accept available care, or having no parent, guardian, custodian or relative caring or willing to care for him, including physical abandonment by

(i) both parents,

(ii) the surviving parent, or

(iii) one parent if the other parent's rights and responsibilities have been terminated under sec. 80 of this chapter or voluntarily relinquished;

Sec. 8. AS 47.10.010(b) deals with jurisdiction. This amendment provides that a child shall be prosecuted as an adult for misdemeanor fish and game and parks and recreational facilities violations.

(B) the child being in need of medical treatment to cure, alleviate, or prevent his suffering substantial physical harm, or mental harm as evidenced by failure to thrive, severe anxiety, depression, withdrawal, or untoward aggressive behavior or hostility toward others, and his parents are unwilling to provide the medical treatment;

(C) the child having suffered substantial physical harm or if there is an imminent and substantial risk that the child will suffer such harm as a result of the actions done by or conditions created by his parent, guardian or custodian or the failure of his parent, guardian or custodian adequately to supervise him;

(D) the child having been sexually abused either by his parent, guardian or custodian, or as a result of conditions created by his parent, guardian or custodian, or by the failure of his parent, guardian or custodian adequately to supervise him;

(E) the child committing delinquent acts as a result of pressure, guidance, or approval from his parents, guardian or custodian.

* Sec. 8. AS 47.10.010(b) is amended to read:

(b) When a minor is accused of violating a traffic statute or regulation, [OR] a traffic ordinance or regulation of an incorporated municipality, a fish and game statute or regulation under AS 16 or a parks and recreational facilities statute or regulation under AS 41.20, excepting a statute the violation of which is a felony, the procedure prescribed in secs. 20 - 90 of this chapter may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense, a fish and game statute or regulation under AS 16 or parks and recreational facilities violation under AS 41.20 shall be charged, prosecuted, and sentenced in

Sec. 9. AS 47.01.030(b) requires notice to be given to each parent in any children's proceeding. It requires efforts to notify absent parents regardless of the length of absence. Proof of notice must be filed before the petition is heard. If proof of notice cannot be given, you must give proof that you tried to give notice.

Sec. 9. AS 47.10.030(b) If the person summoned is not the parent or guardian of the minor, the court shall also give the parent or guardian notice of the place and time of the hearing. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A summons, subpoena or other process may be served by a person authorized by law to make the service. Where personal service cannot be made, the court may direct that service of process be made by registered mail.

Sec. 10. AS 47.10.040 The significant change is that the arbitrary 14 year age requirement is removed.

the district court in the same manner as an adult.

* Sec. 9. AS 47.10.030(b) is repealed and re-enacted to read:

(b) In all cases under this chapter the minor, each parent of the minor and the guardian of the minor shall be given notice adequate to give actual notice of the proceedings and the possibility of termination of parental rights and responsibilities, taking into account education and language differences which are known or reasonably ascertainable by the petitioner or the department. The notice of the hearing shall contain all names by which the minor has been identified. Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court by order directs. Proof of the giving of the notice shall be filed with the court before the petition is heard. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A subpoena or other process may be served by a person authorized by law to make the service, and where personal service cannot be made, the court may direct that service of process be in a manner appropriate under rules of civil procedure for the service of process in a civil action under Alaska law or in any manner the court directs.

* Sec. 10. AS 47.10.040 is amended to read:

Sec. 47.10.040. RELEASE OF MINOR. A minor who is taken into custody may, in the discretion of the court and upon the written promise of the parent, guardian or custodian to bring the minor before the court at a time specified by the court, be released to the care and custody of the parent, guardian or custodian. The minor, if not released, shall be detained as provided by sec. 140 of this chapter. The court may determine whether the father or mother or another person shall have the custody and control of the minor for the duration of the proceedings. If

Sec. 11 & 12. AS 47.10.050 This section asserts very positively a minor's right to counsel. While a minor can waive counsel voluntarily and knowingly, he/she must consult an attorney prior to the waiver of counsel in all cases which would be felonies if committed by an adult. The intention of this section is to assure that juveniles are not intimidated by the legal proceedings and to ensure their rights are not violated.

Sec. 13. AS 47.10.060(d) The only change is in age from 21 to 20.

the minor is of sufficient age and intelligence to state his desires, the court shall give consideration to his desires [OVER 14 YEARS OF AGE, HIS DESIRES IN THE MATTER SHALL BE GIVEN CONSIDERATION BY THE COURT].

* Sec. 11. AS 47.10.050 is amended to read:

Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY. (a) Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a minor will be promoted by the appointment of an attorney to represent the minor or an attorney or other person to serve as guardian ad litem [A GUARDIAN AD LITEM OR ATTORNEY], the court may make the appointment. Appointment of a guardian ad litem or attorney shall be made under the terms of AS 09.65.130.

* Sec. 12. AS 47.10.050 is amended by adding a new subsection to read:

(b) In all proceedings initiated under a petition for delinquency, a minor shall have the right to be represented by counsel and if indigent have counsel appointed for him by the court. The court shall appoint counsel in such cases unless it makes a finding on the record that the minor has made a voluntary, knowing, and intelligent waiver of the right to counsel and a parent or guardian with whom the child resides or resided before the filing of the petition concurs with the waiver. In cases where it has been alleged that the minor has committed an act which would be a felony if he were an adult, waiver of counsel shall not be accepted unless the court is satisfied that the minor has consulted with an attorney before his waiver of counsel.

* Sec. 13. AS 47.10.060(d) and (e) are amended to read:

(d) A minor is unamenable to treatment under this chapter if he probably cannot be rehabilitated by treatment under this chapter before he reaches 20 [21] years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the

Sec. 13 AS 47.10.060(e) The change was to make this section consistent with another section.

Sec. 14. AS 47.10.080(b) deals with limits of custody for delinquents. It eliminates indeterminate custody; custody is limited to two years. The provisions are similar to those for CINA which are explained opposite Sec. 47.10.080(c).

Sec. 14.

Sec. 47.10.080

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for an indeterminate period of time not to extend past a specified date or in any event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under § 200 of this chapter; or

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for an indeterminate period of time, not to extend past a specified date and in no event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment.

offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

(e) If a person who has been tried as an adult under this section has completed his sentence and five years have elapsed, he may petition (or the Department of Health and Social Services may petition for him) the superior court to seal the records of all criminal proceedings against him and all punishments assessed against him, except for traffic offenses, while he was a minor. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. No person may [EVER] use records so sealed for any purpose except that the court may order their use for good cause shown or may order their use by an officer of the court in making a presentencing report for the court.

* Sec. 14. AS 47.10.080(a) is amended to read:

(a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent [,] or a child in need of aid [SUPERVISION, OR DEPENDENT MINOR].

* Sec. 15. AS 47.10.080(b) is repealed and re-enacted to read:

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th

birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it; the department shall place the minor in the juvenile facility which the department considers appropriate and which may include a juvenile correctional school, detention home, or detention facility; the minor may be released from placement or detention and placed on probation on order of the court and may also be released by the department, in its discretion, under sec. 200 of this chapter;

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing:

(A) two-year extensions of supervision which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it;

(3) order the minor committed to the department and placed on probation, to be supervised by the department, and release him to his parents, guardian, other suitable person, or suitable nondetention setting such as a family home, group care facility, or child care facility, whichever the department considers appropriate to implement the treatment plan of the predisposition report; if the court orders the minor placed on probation, it may specify the terms and conditions of

Sec. 16. AS 47.10.080(c) eliminates indeterminate custody and limits an order of custody to two years. Provisions are made for two year extensions of custody to be decided by the court in a hearing if the extension is in the best interests of the minor and the public up to the child's 19th birthday. It also makes provisions for one year supervision past age 19 with the consent of the child. The Department must give the child, parents, or guardian and attorneys reasonable notice of transfer of placement.

Sec. 16
AS 47.10.080

(c) If the court finds that the minor is dependent, it shall

(1) order the minor committed to the **department for an indeterminate** period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;

(2) order the minor released to his parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor reaches majority, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or

(3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:

(A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;

(B) the child has been abandoned for a period of not less than six months by

(i) both parents, or

(ii) the surviving parent, or

(iii) one parent if the other has been deprived of custody and visitation rights;

(C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

(D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has **demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.**

probation; the department may transfer the minor, in his best interests, from one of the probationary placement settings listed in this paragraph to another, and the minor, his parents or guardian and attorney are entitled tc reasonable notice of the transfer; the probation may be for a period of time, not to exceed two years and in no event extend past the day the minor becomes 19, except that the department may petition for and the court may grant in a hearing:

(A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(4) order the minor to make suitable restitution in lieu of or in addition to the court's order under (1), (2) or (3) of this subsection.

* Sec. 16. AS 47.10.080(c) is repealed and re-enacted to read:

(c) If the court finds that the minor is a child in need of aid, it shall

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two years or in any event past the date the minor becomes 19 years of age, except that the department may petition for and the court may grant in a hearing (A) two-year extensions of commitment which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and (B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; the department may transfer the minor, in his best interests, from one placement

A fourth option is added. The court may dispense with the Department's supervision and return the child to his/her family.

(3) In cases where parental rights have been terminated, the Department or guardian must report annually to the court on efforts being made to find a permanent placement for the child. In addition, for parental rights to be terminated a child has to have been adjudicated CINA and parental fault must be clear and convincing that the child is a CINA. It must be shown that the parental conduct is going to continue. This is directly tied to 10 (a) (2).

setting to another, and the minor, his parents or guardian and attorney are entitled to reasonable notice of the transfer;

(2) order the minor released to his parents, guardian, or some other suitable person, and, in appropriate cases, order the parents, guardian, or other person to provide medical or other care and treatment; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor, but the court may dispense with the department's supervision if the court finds that the adult to whom the minor is released will adequately care for the minor without supervision; the department's supervision may not exceed two years or in any event extend past the date the minor reaches age 19, except that the department may petition for and the court may grant in a hearing:

(A) two-year extensions of supervision which do not extend beyond the child's 19th birthday if the extension is in the best interests of the minor and the public; and

(B) an additional one-year period of supervision past age 19 if the continued supervision is in the best interests of the person and the person consents to it; or

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under sec. 10(a)(2) of this chapter as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

Sec. 18. AS 47.10.080(f) adds the provision that the minor and the custodian are entitled to request a review and that reasonable notice in advance of the review will be granted to all parties.

* Sec. 17. AS 47.10.080(e) is amended to read:

(e) If the court finds that the minor is not delinquent or [,] a child in need of aid [SUPERVISION, OR DEPENDENT], it shall immediately order his release from the department's [ITS] custody and his return to his parents, guardian, or custodian, and dismiss [CLOSE] the case.

* Sec. 18. AS 47.10.080(f) is amended to read:

(f) A minor found to be delinquent or [,] a child in need of aid [SUPERVISION, OR DEPENDENT] is a ward of the state as long as he is committed to the department or the department has the power to supervise his actions. The court shall review an order made under (b) or (c)(1) or (2) [OR (j)] of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public [, AND TO DETERMINE IF THE MINOR IS BEING TREATED FAIRLY]. The department, the minor, [OR] the minor's parents, [OR] guardian, or custodian are [IS] entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

* Sec. 19. AS 47.10.085 is amended to read:

Sec. 47.10.085. CHILD IN NEED OF AID [DEPENDENT MINOR]; RELIGIOUS TREATMENT. In a case in which the minor's status as a child in need of aid [DEPENDENT MINOR] is sought to be based on his need for medical care, the court may, upon consideration of the health of the minor and the fact, if it is a fact, that the minor is being provided treatment by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited

See explanation of Sec. 14. AS 47.10.080 on limits of custody.

practitioner of the church or denomination, dismiss the proceedings and thereby close the matter. This may be done, in the interests of justice and religious freedom, on the court's own motion or upon the application of a party to the proceedings, at any stage of the proceedings after information is given to the court under sec. 20(a) of this chapter.

* Sec. 20. AS 47.10.090(b) is amended to read:

(b) The name or picture of a minor under the jurisdiction of the court may not be made public in connection with the minor's status as a delinquent [OR DEPENDENT] child or a child in need of aid unless authorized by order of the court, except that the name of a minor who is found for the second time to have violated a law, which if committed by an adult would be a felony, shall be made public unless the court, for good cause, in certain individual cases, enters an order prohibiting the disclosure.

* Sec. 21. AS 47.10.100(a) and (c) are amended to read:

(a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for his best interest, for a period of time not to exceed two years or in any event extend past the day the minor becomes 19 [UNTIL HE BECOMES 19 YEARS OF AGE], unless sooner discharged by the court, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED TO TREATMENT]. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested

Refer to Sec. 10. AS 47.10.040.

parties and the appropriate department, take action which it considers appropriate.

(c) If a minor is adjudicated a delinquent or [,] a child in need of aid [SUPERVISION, OR A DEPENDENT] before his 18th birthday, the court may retain jurisdiction over him after his 18th birthday for the purpose of supervising his rehabilitation, but the court's jurisdiction over him under this chapter never extends beyond his 19th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED TO TREATMENT]. The department may retain jurisdiction over a child between his 18th and 19th birthdays for the purpose of supervising his rehabilitation, if he has been placed under the supervision [IS COMMITTED TO THE CUSTODY] of the department before his 18th birthday, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it [PETITION THE COURT FOR CONTINUED SUPERVISION FOR AN ADDITIONAL ONE-YEAR PERIOD FOR MINORS WHO HAVE NOT RESPONDED TO TREATMENT].

* Sec. 22. AS 47.10.110 is amended to read:

Sec. 47.10.110. APPOINTMENT OF GUARDIAN OR CUSTODIAN. When, in the course of a proceeding under this chapter, it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian or custodian of his person, the court may make the appointment. The court shall have a summons issued and served upon the parents of the minor, if they can be found, in a manner and within a time before the hearing which the court considers reasonable. The court may determine

whether the father, mother, or the Department of Health and Social Services shall have the custody and control of the minor. If the minor is of sufficient age and intelligence to state his desires, the court shall consider his desires [OVER 14 YEARS OF AGE, HIS DESIRES IN THE MATTER SHALL BE GIVEN CONSIDERATION BY THE COURT].

* Sec. 23. AS 47.10.120(a) is amended to read:

(a) When a child in need of aid [DEPENDENT MINOR] is committed under this chapter the court may, after giving the parent a reasonable opportunity to be heard, adjudge that the parent shall pay in a manner which the court directs a sum which will cover in full or in part the support of the child in need of aid [DEPENDENT MINOR]. When a delinquent minor is committed under this chapter the court shall order that the parent of the minor pay in a manner which the court directs a sum which will cover in full or in part the support of the delinquent minor.

* Sec. 24. AS 47.10.142(c) and (d) are amended to read:

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child and the court of the action and file with the court a petition alleging that the child is a child in need of aid [DEPENDENCY].

(d) The court shall immediately, and in no event more than 48 hours after being notified unless prevented by lack of transportation, hold a hearing at which the minor, if his health permits, and his parents or guardian, if they can be found, shall be permitted to be present. The court shall determine whether probable cause exists for believing the minor to be a child in need of aid [DEPENDENT MINOR], as defined in sec. 290(8) [290(3)] of this chapter. The court shall inform the minor, and his parents or guardian if they can be found, of the

Sec. 26. AS 47.10.081(b) requires the department to submit a predisposition report to the court prior to the disposition hearing and specifies what shall be included in the report.

Sec. 26. AS 47.10.081(c) The predisposition report will be made available by the court to the child, his parents, the attorneys representing the parties and the guardian ad litem not less than 10 days before the disposition hearing. Because of this 10 day requirement the adjudication and disposition hearings will always be separate proceedings.

reasons given as constituting probable cause and the reasons given as authorizing his temporary placement.

* Sec. 25. AS 47.10.150(1) is amended to read:

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of <u>children in need of aid</u> [DEPENDENT] or delinquent minors;

* Sec. 26. AS 47.10 is amended by adding new sections to read:

Sec. 47.10.081. PREDISPOSITION HEARING REPORTS. (a) Before the disposition hearing of a delinquent minor the department shall submit a predisposition report with a recommended plan of treatment to aid the court in its selection of a disposition, and any further information which the court may request.

(b) Before the disposition hearing of a child in need of aid the department shall submit a predisposition report to aid the court in its selection of a disposition. This report shall include, but is not limited to, the following:

(1) a statement of changes in the child's or parent's behavior, which will aid the court in determining that supervision of the family or placement is no longer necessary;

(2) if removal from the home is recommended, a description of the reasons the child cannot be protected or rehabilitated adequately in the home, including a description of any previous efforts to work with the parents and the child in the home and the parents' attitude toward placement of the child;

(3) a description of the potential harm to the child which may result from removal from the home and any efforts which can be made to minimize such harm; and

(4) any further information which the court may request.

(c) The court shall inform the child, his parents and the attor-

Sec. 26. AS 47.10.082 requires that dispositions be made in the best interests of the child and the public. The court also must consider the state's ability to take custody. The state must show that it has the ability to do more than warehouse the child.

Sec. 26. AS 47.10.083 This is a significant change. It requires the court at the annual review hearing to order return of the child to the home unless the court finds by a preponderance of the evidence that the reason for original removal from the home continues to exist; specifies the information to be provided in the review hearing. The burden is on the state to show why it should retain custody.

Sec. 26. AS 47.10.084 attempts to define the responsibilities of legal custodians and parents. (a) and (c) need to be read together, and (b) if a guardian is ever involved. These are terms which have been used and never clearly defined.

neys representing the parties and the guardian ad litem that the predisposition report will be available to them not less than 10 days before the disposition hearing.

(d) For purposes of this section "parents" means the natural or adoptive parents, and any legal guardian, relative, or other adult person with whom the minor has resided and who has acted as a parent in providing for the minor for a continuous period of time before this action.

Sec. 47.10.082. BEST INTERESTS OF THE CHILD. In making its dispositional order under sec. 80(b) of this chapter the court shall consider the best interests of the child and the public, and in making its dispositional order under sec. 80(c) of this chapter the court shall consider the best interests of the child; in either case the court shall consider also the ability of the state to take custody and to care for the child to protect his best interests under secs. 10 - 142 of this chapter.

Sec. 47.10.083. REVIEW HEARING INFORMATION. In the case of a child in need of aid, the child shall be returned home at the review hearing under sec. 80(f) of this chapter unless the court finds by a preponderance of the evidence that the basis upon which the child was adjudicated under sec. 10(a)(2) of this chapter continues to exist. If the child is not returned home, the court shall establish on the record:

(1) why the child was removed from the home;

(2) what services have been provided to or offered to the parents to facilitate reunion;

(3) what services were utilized by the parents to facilitate reunion;

(4) the visitation history between the parents and the child;

(5) whether additional services are needed to facilitate the

return of the child to his parents;

(6) when return of the child can be expected.

Sec. 47.10.084. LEGAL CUSTODY, GUARDIANSHIP, AND RESIDUAL PARENTAL RIGHTS AND RESPONSIBILITIES. (a) When a child is committed under sec. 80(b)(1) or (c)(1) of this chapter to the department or released under sec. 80(b)(2) or (3) or (c)(2) of this chapter to his parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physi cal care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

(b) When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian. The guardian shall be removed only by court order. The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treat-

Sec. 27
AS 47.10.290 (2)

(2) "delinquent minor" is a minor whom the court determines is within the provisions of § 10 (a) (1) of this chapter;

This makes caring a broader more significant term than just meeting physical needs.

Sec. 28
AS 47.10.290.

(3) "dependent minor" is a minor whom the court determines is within the provisions of § 10 (a) (4), (5), (6), (7), (8), or (9) of this chapter;

(7) "child in need of supervision" is a minor whom the court determines is within the provisions of § 10 (a) (2), (3) or (6). (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970)

Sec. 29.
AS. 47.10.080.

(j) If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:

(1) any order which is authorized under (c) of this section; or

(2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

ment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

* Sec. 27. AS 47.10.290(2) is repealed and re-enacted to read:

(2) "delinquent minor" means a minor found to be within the jurisdiction of the court under sec. 10(a)(1) of this chapter;

* Sec. 28. AS 47.10.290 is amended by adding new paragraphs to read:

(8) "child in need of aid" means a minor found to be within the jurisdiction of the court under sec. 10(a)(2) of this chapter;

(9) "caring" under sec. 10(a)(2)(A) means to provide for the physical, emotional, mental, and social needs of the child.

* Sec. 29. AS 47.10.080(j) and 47.10.290(3) and (7) are repealed.

* Sec. 30. Section 3 of this Act has the effect of limiting the discretionary authority of the court to appoint a guardian ad litem under Rule 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska Rules of Children's Procedure, by requiring as a condition of appointment that the court find that the best interests of the child need articulation. Further, this Act requires limitation of the duration of the appointment, limits the scope of the guardian ad litem's authority, and establishes the geographical

Sec. 34 explains how to deal with custody and the effective date of this act.

area from which the guardian ad litem may be selected.

* Sec. 31. Section 18 of this Act has the effect of adding to the court's responsibilities when holding a review under Rule 28, Alaska Rules of Children's Procedure, by requiring the court to hold a hearing upon a showing of good cause, give notice, and afford an opportunity to be heard.

* Sec. 32. Section 7 of this Act has the effect of changing Children's Rule 12 by deleting any references to "truant from school", "endanger(ing) the morals or health", "being wayward or habitually disobedient", or "uncontrolled", and has the effect of substituting the words "child in need of aid" for the terms "child in need of supervision" and "dependent" where those two terms appear in the Rules of Children's Procedure.

* Sec. 33. Section 12 of this Act has the effect of adding to the court's responsibilities under Rules 14 and 15, Alaska Rules of Children's Procedure, by requiring the court to appoint counsel for an indigent minor unless the minor has made a voluntary, knowing and intelligent waiver, and in certain cases of delinquency where there has been waiver of counsel to appoint counsel for the minor unless the court is satisfied that the minor consulted with an attorney before his waiver of counsel.

* Sec. 34. The portions of AS 47.10.080(b) and (c) in secs. 15 and 16 of this Act which specify the length of commitment to the department or probation or supervision by the department are applicable to those minors affected under former AS 47.10.080(b), (c) and (j) before the effective date of this Act so that the commitment, probation or supervision of minors by the department before the effective date of this Act shall continue, but may not exceed two years from the effective date of this Act unless two-year extensions have been granted by the court under this Act. The commitment, probation or supervision of minors with pending judicial actions under AS 47.10.010(a) on the effective date of this Act may not exceed two years unless two-year extensions have been granted by the court under this Act.

SIGNIFICANT ADDITIONAL

STATUTORY AMENDMENTS AFFECTING CHILDREN

(a) Subject to (e) and (f) of this section, the [THE] Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing him in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

AS 47.10.230 is amended by adding new subsections to read:

(e) A child may not be placed in a foster home or in the care of an agency or institution providing care for children if a blood relative exists who requests custody of the child. However, the department may retain custody of the child and provide for its placement in the same manner as for other children if it makes a determination, supported by clear and convincing evidence, that the custody of the child by the blood relative will result in physical or emotional damage. In making that determination, poverty, including inadequate or crowded housing, on the part of the blood relative, is not considered prima facie evidence that physical or emotional damage to the child will occur. This determination may be appealed to the superior court to hear the matter de novo.

(f) If a blood relative of the child specified under (e) of this section exists and agrees that the child should be placed elsewhere, before placement elsewhere the department shall fully communicate the nature of the placement proceedings to the relative. Communication under this section shall be made in the relative's native language, if necessary. Nothing in this section or in (e) of this section applies to child placement for adoptive purposes.

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